

IN THE UNITED STATES OF AMERICA
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

HASSEN MAYHEW : CIVIL ACTION
v. :
LOUIS S. FOLINO, et al. : NO. 13-3658

ORDER

AND NOW, this 6th day of November, 2013, upon consideration of the plaintiff's Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody (Docket #1), the Report and Recommendation ("R&R") of Magistrate Judge Elizabeth T. Hey, and the objections to the R&R of the petitioner, IT IS HEREBY ORDERED that the R&R is APPROVED and ADOPTED and the objections are OVERRULED. The petition shall be placed in suspense pending the petitioner's exhaustion of state court remedies.

IT IS FURTHER ORDERED that the petitioner and the respondents shall notify the Court within thirty days of the conclusion of the state appellate proceedings so that the habeas petition may proceed in this court. There is no basis for a certificate of appealability.

The Court appreciates the petitioner's objections based on the fact that the PCRA petition has been pending for some time but it appears that the trial court has been holding the plaintiff's PCRA petition awaiting the Pennsylvania Supreme

Court's decision in Commonwealth v. Cunningham, No. 38 EAP 2012 (Pa., argued Sept. 12, 2012 and resubmitted on briefs on August 13, 2013), in which the court has been asked to determine whether Miller applies retroactively to cases that were final when Miller was decided.

BY THE COURT:

/s/ Mary A. McLaughlin
MARY A. McLAUGHLIN, J.